SUPREME COURT, U. S.

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FILED
FEB 26 1965
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

**OCTOBER TERM—1964**

No. 937

In the Matter of

ARTHUR BENNETT, an Attorney,
*Petitioner,*

*against*

CO-ORDINATING COMMITTEE ON DISCIPLINE,
*Respondent.*

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

LEONARD FELDMAN,
*Attorney for Petitioner,*
350 Fifth Avenue,
New York, New York.

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## Order Appealed From

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 24th day of March, 1964.

Present—Hon. CHARLES D. BREITEL, *Justice Presiding*
" JAMES B. M. MCNALLY,
" HAROLD A. STEVENS,
" SAMUEL W. EAGER, *Justices*

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IN THE MATTER

OF

ARTHUR BENNETT, *An Attorney.*

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The above named respondent, Arthur Bennett, having moved for leave to reargue this proceeding, or, in the alternative, for leave to appeal to the Court of Appeals from the order of disbarment of this Court, entered on January 30, 1964,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Arthur Bennett in support of said motion, and the affidavit of Henry Weiner in opposition thereto, and after hearing Mr. Leonard Feldman for the motion, and Mr. Henry Weiner opposed,

It is hereby unanimously ordered that the said motion be and the same is hereby denied in all respects.

ENTER:

VINCENT A. MASSI
Clerk.

APPELLATE DIVISION OF THE SUPREME COURT,
FIRST JUDICIAL DEPARTMENT,
CLERK'S OFFICE, COUNTY OF NEW YORK

I, VINCENT A. MASSI, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby certify that the foregoing copy of order has been compared with the original thereof filed in this office on the 24th day of March, 1964, and that the same is a correct transcript thereof, and of the whole of the said original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, in the County of New York, this 24th day of March, 1964.

/s/ VINCENT A. MASSI
Clerk

A-3

**Decision**

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT, SEPTEMBER 1963

CHARLES D. BREITEL, J. P.,
JAMES B. M. MCNALLY,
HAROLD A. STEVENS,
SAMUEL W. EAGER,
ARON STEUER, JJ.

Motions Nos. 2, 3 and 4

September 24, 1963

In the Matter

of

ARTHUR BENNETT, an Attorney.

Disciplinary proceedings instituted by the Co-ordinating Committee on Discipline of the Association of the Bar of the City of New York, the New York County Lawyers' Association and the Bronx County Bar Association. Respondent was admitted to the Bar on January 21, 1942, at a Term of the Appellate Division of the Supreme Court in the Second Judicial Department.

Henry Weiner, attorney for petitioners.

Leonard Feldman, attorney for respondent.

PER CURIAM

Respondent, 43, was admitted to practice at a term of the Appellate Division, Second Department, in January, 1942, and has been actively engaged therein except for a period of four years in the military service.

The petition alleges nine charges of professional misconduct; one was withdrawn (Charge 7). The remaining charges are as follows:

Charge 1. Knowingly submitting false loss of time and earning figures to insurance carriers.

Charge 2. Conspiring to submit false personal injury claims to an insurance carrier.

Charge 3. Knowingly submitting false medical reports.

Charge 4. Making payments of compensation or gratuities to an employee of an insurance carrier to corruptly influence the adjustment of personal injury claims of persons represented by respondent, either as attorney or as counsel to another attorney.

Charge 5. Knowingly submitting false bills of particulars of injuries and special damages.

Charge 6. Settling claims of infants without procuring court orders approving such compromises and fixing legal fees.

Charge 8. Using the name of another attorney, with his permission, as attorney for claimants and parties in actions, whereas, in fact, such other attorney had not been so retained, in order to conceal the true name of the attorney for such persons; knowingly submitting false loss of earning statements to an insurance carrier and paying a percentage of settlement to an employee of such

insurance carrier for the purpose of corruptly influencing him.

Charge 9. Failure to preserve pleadings and other papers for the period required by Rule IV-F of the Special Rules Regulating Conduct of attorneys of the Appellate Division, First Department (now Rule 4(6)).

As to Charge 1 the Referee sustained the specifications relating to Irving Blum and Martin Albin. The specifications relating to Alvin Denbaum, Sherman Ingraham (true name Ingram) and Alfred Silverstein were not sustained; other specifications were withdrawn. Charges 2, 6, 8 and 9 were sustained by the Referee. Charges 3, 4 and 5 were not sustained by the Referee.

We find ample support in the record for the specifications and charges sustained by the learned Referee and confirm his findings thereon. In addition, we hold that the evidence amply sustains the specification on the claim of Sherman Ingram in Charge 1.

In the Ingram matter the employer's questionnaire was forwarded to the insurance carrier on August 6, 1954 and thereafter returned with the information unquestionably false establishing five weeks' disability at $60 per week. The testimony is that respondent supplied the information contained in the questionnaire to Alvin Kaston who signed the questionnaire. Prior to August 6, 1954 respondent had furnished substantially the same information to the carrier's adjuster and medical examiner. In the circumstances we are of the opinion that the record establishes that respondent was the source of the information contained in the questionnaire.

The report of the Referee in the Sherman Ingram claim is disaffirmed and the specification sustained.

Charge 4, to the effect that respondent paid gratuities to an adjuster of an insurance carrier to induce preferential treatment in the settlement of claims for personal injuries, was not sustained by the Referee. The adjuster to whom the alleged payments were made was disbarred by reason of his receipt of similar payments. (*Matter of Benjamin,* 13 A D 2d 221.) The testimony is that in respect of 24 claims payments were made to the adjuster and on each occasion he delivered the drafts in settlement to respondent at his office and thereupon received in currency 5% of the amounts thereof. Respondent denied the payments; in addition, he testified that he did not personally meet the adjuster until the fall of 1958, long after the alleged payments upon which the charge is based.

Respondent denied that he represented the claimants Morasky and Hoffman. The Referee found and the documentary evidence establishes that respondent represented the said claimants. We conclude as did the Referee that respondent's testimony with regard thereto is untrue.

William B. Gladstone, a former attorney who was associated with respondent in some matters, testified he represented the claimant Pollack and had been unable to obtain a settlement of the claim; that he turned over the matter to respondent and within a short time it was adjusted for the sum of $2,500. The evidence also establishes that said adjustment was made between respondent and the adjuster Benjamin acting in behalf of the carrier. Benjamin by his own admission was guilty of professional misconduct.

The record establishes that respondent was extremely successful in the negotiation of settlements with Benjamin in matters of doubtful validity and that Benjamin was motivated by monetary reward in generously and promptly settling them.

The issue of Benjamin's credibility was strenuously litigated; Benjamin was subjected to a scathing and exhaustive cross-examination. We note, however, that no attempt was made to inquire into Benjamin's knowledge of respondent's office and its occupants and that respondent did not introduce evidence by his secretary or any other persons regularly in attendance at his office to the effect that Benjamin did not attend at respondent's office.

We conclude that the Referee's finding on Charge 4 should be disaffirmed and the said charge sustained.

We have examined the record in the light of the contention that the requirements of due process were not met. This is largely grounded on the allegation that testimony was adduced by promises of leniency made by the Assistant District Attorney who presented the matters involved to a New York County Grand Jury and who was trial counsel for petitioner in this proceeding. It is also asserted that false testimony was adduced in this proceeding to the knowledge of petitioner's trial counsel. A careful examination of the record establishes no factual basis for these contentions. The record demonstrates that the matter was fully, fairly and scrupulously presented.

The charges and specifications sustained establish flagrant professional misconduct warranting disbarment. (*Matter of Gladstone*, 16 A D 2d 512; *Matter of Shields*, 16 A D 2d 50; *Matter of Benjamin*, 13 A D 2d 221; *Matter of Shufer*, 12 A D 2d 208; *Matter of Weitz*, 11 A D 2d 76; *Matter of Wysell*, 10 A D 2d 199.)

The proof establishes beyond doubt a general pattern of professional misconduct which demonstrates respondent's unfitness to remain in practice as an attorney.

Respondent should be disbarred.

ALL CONCUR.

## Remittitur

COURT OF APPEALS

State of New York, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 3rd day of December in the year of our Lord one thousand nine hundred and sixty-four, before the Judges of said Court.

Witness:

The Hon. CHARLES S. DESMOND, Chief Judge, Presiding.
RAYMOND J. CANNON, Clerk

Remittitur December 3, 1964

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1. No. 287

In the Matter of

ARTHUR BENNETT, An Attorney,

*Appellant,*

*against*

COORDINATING COMMITTEE ON DISCIPLINE,

*Respondent.*

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BE IT REMEMBERED, that on the 23rd day of July, in the year of our Lord one thousand nine hundred and sixty-four, Arthur Bennett, An Attorney, the appellant—in this cause, came here unto the Court of Appeals, by Leonard Feldman, his attorney—, and filed in the said Court a

Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Coordinating Committee on Discipline, the respondent—in said cause, afterwards appeared in said Court of Appeals by Henry Weiner, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Leonard Feldman, of counsel for the appellant—, and by Mr. Henry Weiner, of counsel for the respondent—, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, First Judicial Department, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, First Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced

according to law, and which record now remains in the said Appellate Divi ..., before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals of the
State of New York

Court of Appeals, Clerk's Office
Albany, December 3, 1964

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON
Clerk

## Notice of Appeal to Court of Appeals

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

In the Matter

of

ARTHUR BENNETT, An Attorney

SIRS:

PLEASE TAKE NOTICE that the Respondent above named, Arthur Bennett, hereby appeals to the Court of Appeals from the order of this Court dated January 30, 1964, disbarring the Respondent above named, and said Respondent hereby appeals as of right to the Court of Appeals from each and every part of said order and on the ground that in the proceeding leading to said order the said Respondent was deprived of due process of law and the equal protection of the laws as provided for by Amendment XIV of the United States Constitution, and was deprived of due process of law and the equal protection of the laws as provided by Article 1, Section 6, and Article

1, Section 11, of the Constitution of the State of New York.

Dated: New York, N. Y.
February 20, 1964

Yours, etc.,

LEONARD FELDMAN,
Attorney for Respondent,
Office & P. O. Address:
32 Broadway,
New York 4, N. Y.

To:

HON. VINCENT A. MASSI,
Clerk, Appellate Division,
First Department,
Madison Ave. & 25th St.,
New York, N. Y.

HENRY WEINER, Esq.
Counsel to Coordinating Committee,
100 Centre Street,
New York, N. Y.

## Order on Remittitur from Court of Appeals

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 22nd day of December, 1964

Present—Hon. BERNARD BOTEIN, *Presiding Justice*
" CHARLES D. BREITEL,
" BENJAMIN J. RABIN,
" FRANCIS L. VALENTE,
" JAMES B. M. MCNALLY,
*Justices*

In the Matter

of

ARTHUR BENNETT, an Attorney,

*Appellant.*

CO-ORDINATING COMMITTEE ON DISCIPLINE,

*Respondent.*

The above named appellant, Arthur Bennett, having appealed to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court, First Judicial Department, entered in the office of the Clerk of the said Court on the 30th day of January, 1964, disbarring the appellant from practice as an attorney and counselor-at-law in the State of New

York, and the said appeal having been heard in the Court of Appeals and after due deliberation the said Court of Appeals having ordered and adjudged that the order of this Court so appealed from be affirmed without costs, and that the record be remitted to the Appellate Division of the Supreme Court, First Judicial Department, there to be proceeded upon according to law;

Now, on reading the remittitur from the Court of Appeals of the State of New York dated December 3, 1964, it is

ORDERED that the order of the Court of Appeals of the State of New York be and the same hereby is made the order of this Court.

Enter

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Presiding Justice